



FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1411

RIN 3055-AA19

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit System Insurance Corporation (FCSIC) may impose under the Farm Credit Act of 1971, as amended. These adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES: *Effective date:* This regulation is effective on [Insert date of publication in the **Federal Register**]. *Applicability date:* The adjusted amounts of civil money penalties in this rule are applicable to penalties assessed on or after January 15, 2023, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lynn M. Powalski, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4380, TTY (703) 883-4390.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act)¹ to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act provides for the regular

¹ Pub. L. 101-410, 104 Stat. 890 (Oct. 5, 1990), as amended by Pub. L. 104-134, title III, § 31001(s)(1), 110 Stat. 1321-373 (Apr. 26, 1996); Pub. L. 105-362, title XIII, § 1301(a), 112 Stat. 3293 (Nov. 10, 1998); Pub. L. 114-74, title VII, § 701(b), 129 Stat. 599 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

evaluation of CMPs and requires FCSIC, and every other Federal agency with authority to impose CMPs, to ensure that CMPs continue to maintain their deterrent values.²

FCSIC must enact regulations that annually adjust its CMPs pursuant to the inflation adjustment formula of the amended Inflation Adjustment Act and rounded using a method prescribed by the Inflation Adjustment Act. The new amounts are applicable to penalties assessed on or after January 15, 2023, for conduct occurring on or after November 2, 2015. Agencies do not have discretion in choosing whether to adjust a CMP, by how much to adjust a CMP, or the methods used to determine the adjustment.

II. CMPs Imposed Pursuant to Section 5.65 of the Farm Credit Act

First, section 5.65(c) of the Farm Credit Act, as amended (Act), provides that any insured Farm Credit System bank that willfully fails or refuses to file any certified statement or pay any required premium shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty FCSIC may recover for its use.³ Second, section 5.65(d) of the Act provides that, except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.⁴ For each willful violation of section 5.65(d), the institution involved shall be subject to a penalty of not more than \$100 for each day during which the violation continues, which FCSIC may recover for its use.

FCSIC's current § 1411.1 provides that FCSIC can impose a maximum penalty of \$231 per day for a violation under section 5.65(c) and (d) of the Act.

III. Required Adjustments

² Under the amended Inflation Adjustment Act, a CMP is defined as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. All three requirements must be met for a fine to be considered a CMP.

³ 12 U.S.C. 2277a-14(c).

⁴ 12 U.S.C. 2277a-14(d).

The 2015 Act requires agencies to make annual adjustments for inflation. Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI-U) preceding the date of the adjustment, and the prior year's October CPI-U. Based on the CPI-U for October 2022, not seasonally adjusted, the cost-of-living adjustment multiplier for 2023 is 1.07745.⁵ Multiplying 1.07745 times the current penalty amount of \$231, after rounding to the nearest dollar as required by the 2015 Act, results in a new penalty amount of \$249.

IV. Notice and Comment Not Required by Administrative Procedure Act

In accordance with the 2015 Act, Federal agencies shall adjust civil monetary penalties “notwithstanding” Section 553 of the Administrative Procedures Act. This means that public procedure generally required for agency rulemaking—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.

List of Subjects in 12 CFR Part 1411

Banks, Banking, Civil money penalties, Penalties.

For the reasons stated in the preamble, part 1411 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1411--RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1411 continues to read as follows:

Authority: Secs. 5.58(10), 5.65(c) and (d) of the Farm Credit Act (12 U.S.C. 2277a-7(10), 2277a-14(c) and (d)); 28 U.S.C. 2461 note.

2. Revise § 1411.1 to read as follows:

⁵ See Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-23-05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (December 15, 2022).

§ 1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, a civil money penalty imposed pursuant to section 5.65(c) or (d) of the Farm Credit Act of 1971, as amended, shall not exceed \$249 per day for each day the violation continues.

Dated: January 11, 2023. Ashley Waldron,
Secretary,
Farm Credit System Insurance Corporation.

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